

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL DISTRICT
INGHAM COUNTY

LINDA A. WATTERS, COMMISSIONER,
OFFICE OF FINANCIAL AND INSURANCE SERVICES
FOR THE STATE OF MICHIGAN,

Petitioner,

File No. 03-1127-CR

vs

Hon. William E. Collette

THE WELLNESS PLAN,
a Michigan Health Maintenance Organization,

Respondent.

MARK J. ZAUSMER (P31721)

AMY M. SITNER (P46900)

ZAUSMER, KAUFMAN, AUGUST & CALDWELL, P.C.

Attorneys for Petitioner, Rehabilitator of The Wellness Plan

31700 Middlebelt Road, Suite 150

Farmington Hills, MI 48334

(248) 851-4111

Scott R. Sewick (P54392)

PARMENTER O'TOOLE

Attorney for West Michigan Emergency Services, an Interested Party

175 W. Apple, P.O. Box 786

Muskegon, MI 49443-0786

(231) 722-1621

**WEST MICHIGAN EMERGENCY SERVICES BRIEF REGARDING
PRIORITY OF PROVIDER CLAIMS**

I. Introduction.

This Court requested the interested parties who wish to present arguments regarding how claims will be classed and paid under Chapter 81 to file briefs with the Court on or before April 20, 2005.

II. Statement of Facts.

West Michigan Emergency Services was a Wellness Plan service provider that filed its Proof of Claim timely on October 21, 2003. West Michigan Emergency Services received an adjudication letter dated February 2005 approving payment of \$55,126.65. A letter dated March 4, 2005 was sent to The Wellness Plan contesting the amount due and requesting an additional reimbursement of \$806.22 incorrectly withheld from West Michigan Emergency Services. The Rehabilitator approved the additional \$806.22 on April 6, 2005, and added \$806.22 to the amount of the pre-rehabilitation claim. The total amount due West Michigan Emergency Services for services provided includes \$54,348.65 for Net Manager Services through June 30, 2003; \$3,046.22 for services provided that were not Net Manager Services; and \$806.22 for money withheld for 20 claims previously paid before the rehabilitation period. The claim did not include interest and was not secured by collateral. It is the position of West Michigan Emergency Services that its claim was filed timely for services provided to members of The Wellness Plan, and that the total amount due is \$58,201.09.

III. Issue

How claims will be classed and paid under Chapter 81 of the Michigan Insurance Code.

IV. Argument and Analysis

MCL 500.8142 of the Michigan Insurance Code outlines the priority of distribution of claims and classes. Claimants are divided into nine classes. Each class must be paid in full before distributing funds to claimants of a lower class. The order of distribution is as follows:

- (a) Class 1 covers costs and expenses of administration.
- (b) Class 2 covers, in part, "claims under policies for losses incurred."
- (c) Class 3 covers claims of the federal government.
- (d) Class 4 covers claims against the insurer for liability for bodily injury or destruction of tangible property.
- (e) Class 5 covers claims of general creditors.
- (f) Class 6 covers claims of any state or local government.
- (g) Class 7 covers claims filed late or any other claims other than claims in Class 8 or Class 9.
- (h) Class 8 covers surplus or contribution notes, or similar obligations.
- (i) Class 9 covers claims of shareholders or other owners.

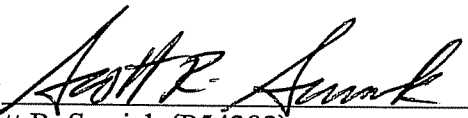
West Michigan Emergency Services should be classified as a Class 5 general creditor. A general creditor is a person or entity having a claim against The Wellness Plan for a specific purpose. MCL 500.8101(3)(b) provides that one purpose of the Insurance Code of 1956 was to protect creditor's interests through the improved methods for rehabilitating insurers, which involved the cooperation and management expertise of the insurance industry. West Michigan Emergency Services, as a service provider, provided a specific service to the members of The Wellness Plan and as such, provided a service to The Wellness Plan. Rehabilitation allowed The Wellness Plan to be able to prevent insolvency. West Michigan Emergency Services has waited a considerable time for payment of services provided before July 1, 2003 to members of The Wellness Plan. West Michigan Emergency Services should receive payment for those services as a Class 5 general creditor.

V. Conclusion

West Michigan Emergency Services requests that this Court classify its claim as a Class 5 general creditor. Further, West Michigan Emergency Services requests that this Court direct the Rehabilitator to complete its priority assessment expeditiously, and distribute funds in a manner that will assure the proper recognition of priorities in accordance with MCL 500.8142.

PARMENTER O'TOOLE

Dated: April 18, 2005

By: 

Scott R. Sewick (P54392)
Attorney for West Michigan Emergency
Services, an Interested Party